



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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October 26, 2012

:Dennis-Allen  
2230 Lakeview Drive  
Fort Wayne, Indiana 46808

*Re: Formal Complaint 12-FC-310; Alleged Violation of the Open Door Law by  
the Wabash County Commissioners*

Dear Mr. Allen:

This advisory opinion is in response to your formal complaint alleging the Wabash County Commissioners ("Commissioners") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* Stephen H. Downs, Attorney, responded on behalf of the Commissioners. His response is enclosed for your reference.

## BACKGROUND

In your formal complaint, you allege while on your way to the October 15, 2012 Commissioner meeting, you observed Commissioners Brian Haupt, Barry Eppley, and Scott Givens conversing with two unknown individuals outside the regular meeting room. During the regular meeting, the two unknown individuals were introduced as Julie Lang from the Indiana Attorney General's Office and Michael Allsworth from the Indiana Department of Environmental Management ("IDEM"). Mr. Allsworth stated during the meeting that in August 2012 he had conversed with Commissioner Eppley about the issue being discussed. You further allege that the conduct of the Commissioners on October 15, 2012 violated the ODL. In addition, you provide that Ms. Lang:

“. . . used this opportunity as a forum to discuss a lawful public notice which charged anyone with a claim(s) to bring said claim by judicial proceedings according to the course of the common-law by October 18, 2012, in which there are NO known claims to date filed with the county. You are concerned that private meeting which took place on October 15, 2012 was to negate, restrict, and impair judicial proceedings according to the course of the common-law separate and independent of judicial power of the State referenced in Article Seven of the Indiana Constitution, interfering with due process and redress of grievances.”

In response to your formal complaint, Mr. Downs advised that the meeting referred to in your formal complaint was a chance hallway encounter between the Commissioners and representatives from IDEM and the Attorney General immediately prior to the Commissioners' monthly meeting. IDEM representatives had requested an opportunity to appear at the October Commissioners' meeting that commenced at 9:00 a.m. Mr. Aylesworth from IDEM arrived shortly prior to 9:00 a.m., and encountered one of the Commissioners at the top of the stairs. Introductions were exchanged and thereafter the other two Commissioners arrived, who were then introduced to Mr. Aylesworth. Ms. Lang from the Attorney General's office then arrived, who was also set to appear before the Commissioners. At that time introductions again were exchanged between all parties. The taking of official action upon County business was not performed or even considered during this brief encounter.

### ANALYSIS

It is the intent of the ODL that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. *See* I.C. § 5-14-1.5-1. Accordingly, except as provided in section 6.1 of the ODL, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. *See* I.C. § 5-14-1.5-3(a).

A "meeting" is a gathering of a majority of the governing body of a public agency for the purpose of taking official action on public business. *See* I.C. § 5-14-1.5-2(c). "Official action" means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. *See* I.C. § 5-14-1.5-2(d). "Public business" means any function upon which the public agency is empowered or authorized to take official action. A "meeting" does not include any social or change gathering not intended by any member of the governing body to avoid the requirements of the ODL. *See* I.C. § 5-14-1.5-2(c)(1).

Here, you have alleged that the Commissioners held a meeting (i.e. took official action on public business) in speaking with the representatives from IDEM and the Attorney General prior to the Commissioners regularly scheduled monthly meeting. In response, Mr. Downs has provided that the "meeting" that you describe was a chance hallway encounter immediately prior to the Commissioners' meeting, between the Commissioners, Mr. Aylesworth, and Ms. Lang. Mr. Downs further provided that the encounter solely consisted of introductions being made between the parties. The public access counselor is not a finder of fact. Advisory opinions are issued based upon the facts presented. If the facts are in dispute, the public access counselor opines based on both potential outcomes. *See Opinion of the Public Access Counselor 11-FC-80*. As such, it is my opinion that the Commissioners did not violate the ODL if the only action taken prior to the October 15, 2012 monthly meeting consisted of introductions between each individual Commissioner and representatives from IDEM and the Attorney General.

## CONCLUSION

Based on the foregoing, it is my opinion that the Commissioners did not violate the ODL if the only action taken prior to the October 15, 2012 monthly meeting consisted of introductions between each individual Commissioner and representatives from IDEM and the Attorney General.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage  
Public Access Counselor

cc: Stephen H. Downs